

STATE OF SOUTH DAKOTA  
LEGAL SERVICES CONTRACT

Agreement made and entered into this 29 day of July, 2010, by and between the South Dakota Department of Labor, a state agency, having its principal address at 700 Governors Drive, Pierre, South Dakota 57501 (the "State") and Megan Poppen, an individual, having her principal address at 2908 Hoefer Ave., Rapid City, SD 57701 ("Ms. Poppen").

The State hereby enters into this Agreement for legal services with Ms. Poppen in consideration of and pursuant to the terms and conditions set forth herein.

1. Ms. Poppen will perform services for the State as follows:

Provide the State with Administrative Law Judge's services such as: reviewing hearing notices, conducting hearings, and issuing decisions in accordance with state and federal guidelines.

2. Ms. Poppen's services under this Agreement will commence on August 2, 2010 and end on December 31, 2010, unless sooner terminated pursuant to the terms hereof.
3. The State will provide Ms. Poppen with a laptop computer, polycom telephone and recording device to be used by Ms. Poppen to fulfill her obligations of this Contract.
4. The State won't pay Consultant's expenses as a separate item.
5. The State will make payment for services upon satisfactory completion, not to exceed \$60 per case. The TOTAL CONTRACT AMOUNT is an amount not to exceed \$24,000.00. Payment will be made pursuant to invoices submitted with a signed state voucher.
6. Payments made to Ms. Poppen as specified herein will be deemed to include all taxes of any description, federal, state or municipal assessed against Ms. Poppen by reason of this Agreement.
7. Ms. Poppen will indemnify and hold the State of South Dakota, its officers, agents and employees, harmless from and against any and all actions, suits, damages, liability or other proceedings that may arise as the result of performing services hereunder. This section does not require Ms. Poppen to be responsible for or defend against claims or damages arising solely from errors or omissions of the State, its officers, agents or employees.

8. While performing services hereunder, Ms. Poppen is an independent contractor and not an officer, agent, or employee of the State of South Dakota.
9. It is agreed and acknowledged by Ms. Poppen that in order for Ms. Poppen to represent the State of South Dakota or the interests of the Department of Labor in any court of law, she or any substitute counsel must receive an appointment as an Assistant Attorney General from the Attorney General of the State.
10. Ms. Poppen will report to the State any event encountered in the course of performance of this Agreement which results in injury to the person or property of third parties, or which may otherwise subject Ms. Poppen or the State to liability. Ms. Poppen will report any such event to the State immediately upon discovery. Ms. Poppen's obligation under this section will only be to report the occurrence of any event to the State and to make any other report provided for by their duties or applicable law. Ms. Poppen's obligation to report won't require disclosure of any information subject to privilege or confidentiality under law (e.g., attorney-client communications). Reporting to the State under this section won't excuse or satisfy any obligation of Ms. Poppen to report any event to law enforcement or other entities under the requirements of any applicable law.
11. This Agreement may be terminated by either party hereto upon 2 weeks written notice. In the event Ms. Poppen breaches any of the terms or conditions hereof, this Agreement may be terminated by the State at any time with or without notice. If termination for such a default is effected by the State, any payments due to Ms. Poppen at the time of termination may be adjusted to cover any additional costs to the State because of Ms. Poppen's default. Upon termination the State may take over the work and may award another party an agreement to complete the work under this Agreement. If, after the State terminates for a default by Ms. Poppen, it's determined that Ms. Poppen wasn't at fault, then Ms. Poppen will be paid for eligible services rendered and expenses incurred up to the date of termination.
12. This Agreement depends upon the continued availability of appropriated funds and expenditure authority from the Legislature for this purpose. If for any reason the Legislature fails to appropriate funds or grant expenditure authority, or funds become unavailable by operation of law or federal funds reductions, this Agreement will be terminated by the State. Termination for any of these reasons isn't a default by the State nor does it give rise to a claim against the State.
13. This Agreement won't be assigned without the express prior written consent of the State. This Agreement won't be amended except in writing, which writing will be expressly identified as a part hereof, and be signed by an authorized representative of each of the parties hereto.
14. This Agreement will be governed by and construed in accordance with the laws of the State of South Dakota. Any lawsuit pertaining to or affecting this Agreement


will be venued in Circuit Court, Sixth Judicial Circuit, Hughes County, South Dakota.

15. (Attorney Name) agrees not to participate as Counsel, in person or his law firm, in opposition to the interests of the State of South Dakota or any of its departments, bureaus, boards or commissions consistent with the policy attached hereto and labeled Exhibit A.
16. Ms. Poppen will comply with all federal, state and local laws, regulations, ordinances, guidelines, permits and requirements applicable to providing services pursuant to this Agreement, and will be solely responsible for obtaining current information on such requirements.
17. Ms. Poppen won't use subcontractors to perform the services described herein without the express prior written consent of the State. Ms. Poppen will include provisions in its subcontracts requiring its subcontractors to comply with the applicable provisions of this Agreement, to indemnify the State, and to provide insurance coverage for the benefit of the State in a manner consistent with this Agreement. Ms. Poppen will cause its subcontractors, agents, and employees to comply, with applicable federal, state and local laws, regulations, ordinances, guidelines, permits and requirements and will adopt such review and inspection procedures as are necessary to assure such compliance.
18. Any notice or other communication required under this Agreement will be in writing and sent to the address set forth above. Notices shall be given by and to James Marsh on behalf of the State, and by Megan Poppen, on her own behalf, or such authorized designees as either party may from time to time designate in writing. Notices or communications to or between the parties will be deemed to have been delivered when mailed by first class mail, provided that notice of default or termination will be sent by registered or certified mail, or, if personally delivered, when received by such party.
19. In the event that any court of competent jurisdiction holds any provision of this Agreement unenforceable or invalid, such holding won't invalidate or render unenforceable any other provision hereof.
20. All other prior discussions, communications and representations concerning the subject matter of this Agreement are superseded by the terms of this Agreement, and except as specifically provided herein, this Agreement constitutes the entire agreement with respect to the subject matter hereof.

In Witness Whereof, the parties signify their agreement effective the date above first written by the signatures affixed below.

STATE

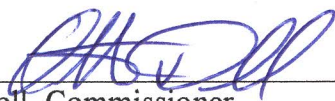
CONSULTANT

BY:   
Pamela S. Roberts, Cabinet Secretary,  
Department of Labor

BY:   
Megan Poppen

Date: 8-3-10

Date: 7-29-10


  
Otto Doll, Commissioner,  
Bureau of Information and Telecommunications

Date 8-10-2010

  
Jeff Bloomberg, Commissioner,  
Bureau of Administration


Date 8/5/10

The foregoing Agreement is hereby approved.

  
Dennis D. Rounds  
Litigation/Legal Contract Manager,  
For the Governor

Date: 8/13/10

The foregoing Agreement is hereby approved as to form.

Approved as to Form  
Marty J. Jackley by JPH AA6  
  
Marty Jackley  
Attorney General

Date: 8/23/2010

## POLICY CONCERNING CONFLICTS OF INTEREST

This policy is adopted to address the issue of potential conflicts of interest with regard to the State of South Dakota and attorneys contracting with the State of South Dakota ("State") to perform legal services. This policy will be attached as an addendum to any contract for legal services entered into between the State and any attorney contracting to perform those legal services and shall become a part of that contract.

A. Except as provided in paragraph B of this policy, if an attorney contracting to perform legal services with the State has a pending claim against the State or its employees on behalf of a client; or in the event an attorney with an existing contract for legal services with the State is approached by a client seeking to file a lawsuit against the State or its employees, the contracting attorney shall notify the Attorney General and the manager of the state PEPL Fund in writing of that conflict of interest prior to the time a contract is signed or prior to undertaking representation of the adverse client. The Attorney General shall personally decide within ten working days whether or not the State will waive any conflict of interest created by that claim. The Attorney General will consider the magnitude of the claim against the State, the appearance of impropriety which could adversely affect the interests of the State, the degree, if any, to which the contracting attorney has or will gain access to information which would give him an undue advantage in representing a client whose interests are adverse to the State, whether the department or agency against which the claim is made is also a department or agency that will be represented by the contracting attorney, and any other factor which the Attorney General may deem pertinent in his discretion.

Notification of the Attorney General under this paragraph, prior to the commencement of an action is not required if the contracting attorney is approached by a client to commence an action against the State and the contracting attorney has a good faith belief that absent immediately filing, the action would be barred by a statute of limitations or comparable provision. Under these circumstances, the contracting attorney shall, as soon as practical, contact the Attorney General regarding the conflict and agrees

that if the conflict of interest is not waived, to withdraw from representing the client in the pending action.

B. Any conflict of interest which may be created by the following situations will automatically be deemed to be waived by the Attorney General and will not be subject to the notification requirements of this policy statement:

1. Any action where the contracting attorney represents a codefendant with the State in a claim or lawsuit, regardless of any cross-claim or third-party claim which the State and the attorney's non-State client may have against each other; unless the cross-claim or third-party claim was readily apparent at the time of contracting with the non-State client and seeks significant monetary consequences; the cross-claim is against a state agency which the contracting attorney represents; or by virtue of representation of the State under contract the attorney had access to information which would give the non-State client an unfair advantage.
2. Any condemnation action in which the contracting attorney represents a condemnee.
3. Any administrative licensing proceeding in which the contracting attorney appears representing a client, regardless of the fact that the client may make a claim which would be adverse to a position taken by a department or agency of state government; unless the claims, if successful, will have significant monetary consequences to the State; or by virtue of representation of the State under contract the contracting attorney had access to information which would give the non-State client an unfair advantage.
4. Any administrative proceeding before the Department of Revenue in which the contracting attorney's client may have a claim which would create a potential liability for the State of South Dakota; unless the claim, if successful, will have significant monetary consequences to the State; or by virtue of representation of the State under contract the contracting attorney had access to information which would give the non-State client an unfair advantage.
5. Any bankruptcy proceeding in which the contracting attorney represents a client other than the State of South Dakota and in which the State of South Dakota has a secured or unsecured claim.
6. Any activity relating to the negotiation of a contract with the State of South Dakota and another client represented by the contracting attorney; unless the contracting attorney is actively representing the department or agency of state government with which the contract is being negotiated; or by virtue of representation of the State under contract the contracting attorney had access to information which would give the non-State client an unfair advantage.

7. The defense of any criminal action; unless the attorney has an existing contract as a special prosecutor in criminal actions for the State of South Dakota; or if, in representation of the State under contract, the contracting attorney had access to information which would give the non-State client an unfair advantage in the criminal action.
8. Any small claims action in which the contracting attorney represents any plaintiff or defendant with interests adverse to those of the State.
9. Any action brought through representation under a long-term contract or appointment of any other governmental entity, whether or not that governmental entity has interests that are adverse to those of the State; unless the claim, if successful, will have significant monetary consequences against the State of South Dakota.
10. Any action in which the State is a named party but has only a nominal interest, as in mortgage foreclosures and quiet title actions.
11. Any lobbying activity by the contracting attorney
12. Any worker's compensation case in which the contracting attorney represents a claimant; unless the contracting attorney represents the South Dakota Department of Labor in matters relating to worker's compensation claims or benefits.

C. The Attorney General reserves the right to raise a conflict of interest, notwithstanding the automatic waiver provisions of paragraph B of this policy, where a conflict of interest covered by the South Dakota Rules of Professional Conduct exists and in the discretion of the Attorney General, is it determined to be in the State's best interest to raise the conflict. The Attorney General shall notify the contracting attorney of the existence of the conflict and the delineation of waiver within seven days of the Attorney General's actual notice of the contracting attorney's action against the State.

D. For purposes of this policy: 1) the term "contracting attorney" means the attorney actually signing the agreement and his entire law firm; 2) the term "State" means the State of South Dakota and any branch, constitutional office, department, agency, institution, board, commission, authority, or other entity by state government; and 3) the term "significant monetary consequences" means that the suit, claim, action or other proceeding against the State, if successful, could reasonably result in the State making payments to the contracting attorney, the client or the class the client represents in excess

of \$50,000 or in the case of the proceeding against the Department of Revenue, or other state taxing entity payments or lost revenue in excess of \$50,000.

E. This guideline shall not be construed as altering or reducing an attorney's obligations to his client under the South Dakota Rules of Professional Conduct specifically stated herein.